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9 **UNITED STATES BANKRUPTCY COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SAN JOSE DIVISION**

12 IN RE:) Case No. 07-53563 ASW
13)
14) INTEGRATED PACKAGING ASSEMBLY CORP) Chapter 11
15) DBA IPAC)
16) DEBTOR(S).) Date: July 22, 2008
17)) Time: 10:45 a.m.
18)) Place: United States Bankruptcy Court
19)) 280 S. First Street, Room 3020
20)) San Jose, CA 95113
21)) Judge: Hon. Arthur S. Weissbrodt

22 **REPLY TO OPPOSITION TO MOTIONS TO CONVERT CASE TO CHAPTER 7**

23 Old Oakland Road Associates, LLC (“OORA”) hereby submits this Reply to the OPPOSITION
24 To MOTIONS TO CONVERT CASE TO CHAPTER 7 (the “Opposition”) filed by the Debtor.

25 **I. INTRODUCTION**

26 The Debtor’s disjointed Opposition cannot defend the indefensible. Debtor’s actions in
knowingly submitting materially false statements under penalty of perjury and the filing of the
Chapter 11 case have resulted in a gross abuse of the Chapter 11 bankruptcy process. It is clear that
the Chapter 11 case was not filed for a bankruptcy purpose but as a litigation tactic. The Debtor
seeks to benefit from the automatic stay without any intention on the part of the Debtor to subject its
assets to the jurisdiction of the bankruptcy court so that creditors could be paid. The Debtor has not
articulated any reorganization strategy beyond some vague, hearsay statement by its counsel that

1 maybe its principal will buy the Debtor's name and that it hopes it is successful in litigation. The
2 Court should convert this case so that an independent trustee can investigate the Debtor's actions in
3 this case and to determine whether an action against Batinovich to pierce the corporate veil and/or
4 recover the assets transferred for no monetary consideration by the Debtor to i2a Technologies
5 ("i2a"), a company solely owned by the Responsible Individual, should be instituted.

6 II. ARGUMENT

7 The Opposition contends that (i) the Debtor filed the case in good faith and maintains it in
8 good faith; (ii) no harm resulted from the misrepresentations; (iii) that the Court should consider the
9 costs and dislocation caused by a trustee; and (iv) appointment of an examiner is a more cautious
10 response. The Opposition is without merit and the Motion should be granted.

11 A. The Case Should Be Converted Due To The Debtor's Bad Faith Actions And 12 Deliberate Falsehoods.

13 The Debtor would have this Court believe that it filed the case for some legitimate
14 reorganization purpose, contending that it was necessary to assert its "possessory" and "equitable
15 rights" to continued occupancy of the premises; that it was "contractually obligated" to provide i2a
16 Technologies ("i2a") with facilities and that failure to comply with such contractual obligation
17 would expose the Debtor to potential claims and liabilities and that it was faced with multiple
18 litigation claims. However, in seeking bankruptcy protection for the Debtor and misrepresenting the
19 extent and value of Debtor's assets, the Debtor attempted to have the best of both worlds; the
20 protection of the automatic stay and not having to subject its assets to the jurisdiction of the
21 bankruptcy court for the benefit of creditors.

22 The Batinovich Declaration asserted that the Debtor had assets to be preserved, employees to
23 be paid, contracts to be fulfilled and operations to be continued all of which were supposedly for the
24 benefit of creditors and which would be lost if the bankruptcy wasn't filed. In truth and in fact,
25 none of the foregoing was true and the Debtor's Responsible Individual knew it wasn't true when he
26 signed the Declaration. While he apparently claims now that he was "confused", it is clear from his
27 Rule 2004 testimony that he was desperate to avoid the eviction and knowingly made gross
28 misrepresentations to magnify the supposed harm. For example, equipment he claimed was worth

1 \$15,000,000 based on two appraisals was later admitted by the Responsible Individual to be worth
2 less than \$1,000,000, Batinovich explaining that his earlier \$15,000,000 figure was a figure he
3 “pulled out of the air”.

4 The Debtor initially filed schedules, signed under penalty of perjury by Batinovich, in which
5 the Debtor scheduled, among other assets, “various” assets of “unknown” value in response to
6 question No. 22 (patents, copyrights, and other intellectual property), question 29 (machinery,
7 fixtures, equipment and supplies used in business), and question 30 (inventory) on Schedule B, yet it
8 was only after the Relief From Stay Motion was resolved and Batinovich was successful in obtaining
9 some time for the Debtor to move from the premises, that the Debtor “corrected” the record. Only at
10 the Debtor’s initial debtor interview and the continued 341 meeting, and after the hearing on the
11 Relief From Stay Motion, did Batinovich advise the UST that the Debtor had transferred all of its
12 assets to i2a in 2006, and that the Debtor was, in essence, an empty shell with some litigation claims
13 of uncertain value. Subsequently, the Debtor filed an amended Schedule B changing the answers to
14 questions 22, 29 and 30 to “none” and the value to “0”.¹ In short, it is clear that the bankruptcy
15 case was filed to forestall the eviction of a business without having to put the business in bankruptcy.
16 The Batinovich Declaration was filed solely to facilitate this improper purpose.

17 The case is not maintained in good faith. The Debtor waited over 5 months to file an
18 application to appoint its lawyer. It initially opposed OORA’s efforts to obtain a Rule 2004
19 examination, requiring OORA to prepare and file an amended Application to respond to the Debtor’s
20 non-meritorious objections. The Debtor has failed to respond to requests made by OORA to
21 document the loan supposedly forgiven as part of the “consideration” for the sale of the Debtor’s
22 assets to Batinovich’s wholly owned corporation, i2a. (See SUPPLEMENTAL DECLARATION OF
23 ROBERT A. FRANKLIN IN SUPPORT OF MOTION TO CONVERT, filed concurrently herewith). The
24 Debtor has done nothing to bring in assets to satisfy the claims of creditors. It has simply “parked”
25 itself in Chapter 11, hoping for litigation success.

26 Not only has the Debtor parked itself in Chapter 11, it is using the automatic stay to object to
27

28 ¹ The Debtor still did not disclose the sale of assets to i2a in response to Question No. 10 in the
Statement of Financial Affairs.

1 potential counterclaims filed by OORA in the state court litigation² seeking to pierce the corporate
2 veil against Batinovich.

3 The Debtor does not deny that its Responsible Individual made material misrepresentations;
4 its defense in this regard is that there is “no harm, no foul”. First, there is harm to the integrity of
5 the process. The Debtor cannot simply make conscious, willful and material misrepresentations to
6 advance its own purposes at the expense of the bankruptcy process without consequence. The
7 integrity of the system requires that parties be truthful in their statements to the court. Second, both
8 the U.S. Trustee and creditors such as OORA have expended considerable time and effort to
9 investigate and document these misrepresentations. Third, creditors have been and are being harmed
10 because assets available to pay claims are presently beyond the reach of bankruptcy jurisdiction.

11 B. The Case Should Be Converted Because The Debtor Cannot Propose And Confirm A
12 Plan.

13 The Debtor also lamely asserts next that its “plan” is dependent upon the success of the
14 litigation and that Mr. Batinovich “may be willing” to submit an offer to purchase the Debtor’s
15 name. There is no contemplated plan. The Debtor is not even liquidating as there are no substantial
16 assets to sell and its remaining litigation claims are speculative. Furthermore, the Debtor cannot
17 reorganize as there is no ongoing business. Finally, the Debtor is not inclined to sue its responsible
18 individual and i2a to recover assets. Only a trustee can do that. Therefore, conversion for cause
19 under section 1124(b)(4)(J) is appropriate.

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² OORA and the Debtor stipulated to relief from stay so that the parties could proceed in state court
28 to litigate various claims. However, OORA understands that the Debtor will object to the inclusion of a cause
of action to pierce the corporate veil, claiming that cause of action belongs to the bankruptcy estate.

III. CONCLUSION

Based on the foregoing and for the reasons set forth by the United States Trustee in her Motion, OORA respectfully requests this Court to convert the case to Chapter 7.

Dated: July 17, 2008

MURRAY & MURRAY
A Professional Corporation

By: /s/ Robert A. Franklin

Robert A. Franklin

Attorneys for Old Oakland Road Associates,
LLC